HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP. No.1675 /05 (S/S)
Smt Pushpa and others
Vs
Nagar Palika Kashipur and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 31.03.06

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.1675 (SS) OF 2005

1. Smt. Pushpa, wife of Shri Ram Gopal,
2. Shri. Kamal, S/o Shri Krishna Gopal,
3. Smt. Rekha, wife of Shri Ram Kumar,
4. Smt. Sundari, wife of Shri Rajendra,
5. Smt. Bala wife of Shri Raja Ram,
6. Smt. Kiran wife of Shri Indra Mohan.
7. Smt. Laxmi wife of Shri Manoj,
8. Shri Suresh, S/o Shri Keshav,
9. Smt. Geeta wife of Shri Ved Prakash,
10. Smt. Sangeeta, wife of Shri Rajan,
11. Shri Ajay, S/o Shri Ramesh,
12. Shri Sudesh, S/o Shri Ram Avtar,
13. Shri Arvind, S/o Shri Ashok,
14. Shri Mohit, S/o Shri Harkesh,
15. Smt. Munni wife of Shri Pramod,

All residents of Mohalla Maheshpura, Tehsil Kashipur, District Udham Singh Nagar, Uttaranchal.

.....Petitioners.

Versus

1. Nagar Palika Parishad Kashipur, District Udham Singh Nagar, though its Executive officer.
2. Nideshak Shahari Evam Avas Nideshak Uttaranchal Nideshalaya, Dehradun.
3. Secretary Shari Avam Avas Vibhag Uttaranchal Shashan, Dehradun. .....Respondents.

Dated: 31.03.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pooran Singh Rawat, Advocate for the petitioner, Pradeep Lohni, Advocate for the respondent no. 1.

By the present writ petition, the petitioners have prayed for a writ of mandamus commanding the respondents to regularize the services of thue petitioner on the post of Safai Karmachari at Nagar Palika Parishad, Kashipur, District Udham Singh Nagar.

Briefly stated, the petitioners are working in the department of the respondents on daily wage from the following dates:-

S. Nos.	Name of petitioners	Year
1	Smt. Pushpa Wife of Shri Ram Gopal	1989
2	Shri Kamal son of Shri Krishna Gopal	2003
3	Smt. Rekha wife of Shri Ram Kumar	2003
4	Smt. Sundari wife of Shri Rajendra	2003
5	Smt. Bala wife of Shri Raja Ram	1989
6	Smt. Kiran wife of Shri Indra Mohan	2003
7	Smt. Laxmi wife of Shri Manoj	2003
8	Shri Suresh son of Shri Keshav	2003
9	Smt. Geeta wife of Shri Ved Prakash	2003
9	Smt. Sangeeta wife of Shri rajan	2003
10	Shri Ajay, son of Shri Ramesh	2003
11	Shri Sudesh, son of Shri Ram Avtar	2004
12	Shri Arvind, son of Shri Ashok	2003
13	Shri Mohit son of Shri Harkesh	2003
14	Smt. Munni wife of Shri Pramod	13-12-2004

Petitioners have submitted that Government of Uttar Pradesh has issued Government Order dated 26th June, 1992

regarding the regularization of the daily wager. Relevant portion of the sia dG.O. is quoted blow:-

''(1) स्थानीय निकायों में यदि □ासनक की अनुमति से सृजित नये पद उपलबध हाने के कारण किसी कर्मचारी की सेवा निवृत्ति के कारण या किसी कर्मचारी की मृत्यु के कारण नियमित पदों की रिक्तियों होती है तो उस पर सबसे पहले उस स्थानीय निकाय में कार्यरत ऐसे दैनिक वेतन भोगी कर्मचारी को वरीयता के अधार पर आरक्षण के नियमों का पालन करते हुए नियुक्तियों की जायेंगी जो दैनिक वेतन भोगी कर्मचारी 11–10–1989 को कार्यरत थे किन्तु उन्होने उस दिन तीन वर्ष की लगातार सेवा और प्रत्येक वर्ष में 240 दिन में कार्य की शर्त पूरी कर ली हो और तब से लगातार स्थानीय निकायों दैनिक वेतन भोगी कर्मचारी के रूप में कार्यरत हो ।

(2) यदि प्रश्नगत स्थानीय निकाय में इस प्रकार या अब किसी भी प्रकार का कोई दैनिक वेतन भेगी कर्मचारी नहीं है तभी बाहर से अभ्यार्थियों में से नियुक्ति की जा सकेगी किन्तु बाहर से अभ्यार्थियों की नियुक्तियों के लिए इम्लाईमेण्ट एक्सचेंज से नाम मंगाने, चयन की अन्य सभी प्रकियाओं और नियमों का पालन तथा चयन प्रक्रिया जिला मजिस्ट्रेज के देख रेख में कराने की अनिवार्यता होगी ओर ऐसी नियुक्तियों में अन्य किसी भी प्रकार से नियुक्तियां नहीं की जा सकेंगी ।''

The petitioners have referred the judgment passed on 12th July, 2005 in ***Writ Petition No. 6449 of 2001 (S/S), Madan Lal and others Vs. State of U.P.*** Relevant observations are quoted below:-

"However, this court feels that the regularization can only be directed, subject to the condition that the posts are sanctioned by the government. Learned Standing Counsel for the Nagar Palika submits that by Government Order dated 25.09.2004, the government of Uttaranchal, has lifted the ban on recruitment of sweepers. Learned Counsel further brought to the notice of the Court that there are some twenty vacant posts, which are required to be filled and Nagar Palika is ready to accommodate those petitioners, who are

entitled to same according to their seniority, in terms of the government Order. In view of said statement, as to the regularization of the petitioners, it is directed that their cases for regularization may be considered expeditiously according to the seniority of the daily wage workers (provided they are still working on daily wages), subject to availability of the vacant post."

The petitioners have also referred the judgment of ***Haryana Vs. Pyara Singh, AIR 1992 SC 2130.*** The relevant observation is quoted below:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job."

Learned counsel for the petitioner has referred the judgment of the Apex Court in the case of ***State of U.P. Vs Putti Lal reported in 2002D(1) E.L.C. 524 (S.C).*** It was also a case of daily wagers of Forest Department. The Apex Court has held as under:-

"So far as the State of Uttaranchal is concerned, a scheme for regularization of daily workers has been produced before us which prima facie does not appear

to be objectionable excepting the provisions regarding qualification for regularisation. Be it stated that the qualification essential for being regularised would be the qualification as was relevant on the date of particular employee was taken in as a daily wager and not the qualification, which is being fixed under the Scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wage workers. Needless to mention that the appropriate authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would also be entitled to the minimum of he pay scale as is available to his counter parts to in the Government until his services are regularised and he is given regular scale of pay"

In the case of ***D.S. Nakara and others Vs. Union of India reported in AIR 1983 Supreme Court 130***, the concept of social justice has been laid down by the Apex Court. Relevant observations of which are quoted below:

"65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the

rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P-1 and P-2 violates Article 14 and is unconstitutional and is struck down."

The Hon'ble Apex Court in the case of ***Kapila Hingdorani Vs. State of Bihar 2003(7) AIC18 (SC) 194*** has emphasized for improving he methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, wherein paragraph 50 of the judgment, the term "life" has been defined relying upon the judgment of Field, J. in Munn V. Illinois reported in 1877 (94) US 1131, as under:

"Paragraph – 50: The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so may other facets thereof. 'Life', as observed by Filed, J. in Munn V. Illinois [1877(94)US 1131] means something more than mere animal existence and the inhibition against the deprivation of life extends to tall those limits and facilities by which life is enjoyed. [See Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others [1983(1) SCC 124]. and Olga Tellis and others Vs Bombay Municipal Corporation and others [1985(3) SCC 545].

In view of the above, the matter is sent back to the respondent concerned, who shall decide the matter afresh in the light of the G.O. dated 216.06.1992 in accordance with law within a period of two months from the date of production of the certified copy of the order.

Writ petition is disposed of. No order as to costs.

31.03.2006 (Rajesh Tandon, J.)

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